NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KHASEEM GREENE, Plaintiff, v. ELIZABETH POLICE DEPARTMENT, et al., Defendants.	Civil Action No: 18-8972-SDW-CLW **OPINION** November 1, 2018

WIGENTON, District Judge.

Before this Court is Defendant Union County Prosecutor's Office ("UCPO"), Patricia Cronin ("Cronin"), Stephen Kaiser ("Kaiser"), Deborah White ("White"), and Mark Spivey's ("Spivey") (collectively, "UCPO Defendants") Motion to Dismiss Plaintiff Khaseem Greene's ("Greene" or "Plaintiff") claims against them pursuant to Federal Rule of Civil Procedure 12(b)(6). Jurisdiction is proper pursuant to 28 U.S.C. § 1331 and § 1367(a). Venue is proper pursuant to 28 U.S.C. § 1391. This opinion is issued without oral argument pursuant to Federal Rule of Civil Procedure 78.

For the reasons stated herein, the Motion to Dismiss is **GRANTED**.

I. BACKGROUND AND PROCEDURAL HISTORY

Plaintiff is a resident of Elizabeth, New Jersey and a former professional football player. (Compl. ¶¶ 2-3, 14.) UCPO is "an office organized pursuant to the laws of the State of New Jersey,

with a principal place of business" in the City of Elizabeth. (*Id.* ¶ 18.) Cronin, Kaiser, White, and Spivey were, at all relevant times, employees of the UCPO. (*Id.* ¶¶ 19-22.)

On or about December 3, 2016, "[m]ultiple gunshots were fired into a crowd of people" in Elizabeth. (*Id.* ¶ 26.) Elizabeth police investigated, and on the basis of witness testimony, surveillance video and other evidence, arrested and charged Jason Sanders ("Sanders") with the shooting. (*Id.* ¶¶ 27-37.) Defendant Cronin approved the charges against Sanders. (*Id.* ¶ 34-36.) When the police interrogated Sanders, he stated the Plaintiff had given him the gun used in the shooting. (*Id.* ¶¶ 38-39.) At the end of his questioning, Sanders also indicated that he had "lied" during his interview. (*Id.*) After consulting with the police, who apprised her of "new details" of the case, including Sanders' statement that Plaintiff provided him with a gun, Cronin "approved bringing charges against Plaintiff." (*Id.* ¶ 41.)

Plaintiff alleges that an officer with the police department "prepared a Complaint-Warrant . . . with Cronin's approval and/or instruction" that contained "two blatantly false statements to manufacture evidence to create probable cause against Plaintiff." (*Id.* ¶ 42.) Specifically, Plaintiff alleges that the Complaint-Warrant contained a false statement that Plaintiff "'was observed on surveillance video handing over a handgun' to Sanders" and that Sanders "admit[ed] that [Plaintiff] handed him the handgun." (*Id.* ¶ 43.) On or about May 9, 2017, Kaiser "along with White and/or on White's orders," presented evidence to the Grand Jury and obtained an indictment against Plaintiff and Spivey notified the press about the indictment. (*Id.* ¶¶ 48, 53.) That same day, Plaintiff lost his position with the Kansas City Chiefs football team. (*Id.* ¶¶ 53-55.) The UCPO moved forward with the prosecution of Plaintiff until July, 2017 when it "sought, and [was] granted an Order dismissing the indictment against Plaintiff." (*Id.* ¶¶ 56-70.)

On May 8, 2018, Plaintiff filed a fourteen-count complaint in this Court, alleging that the UCPO Defendants and others[1] violated his constitutional, statutory, and common law rights by unlawfully arresting and prosecuting him. (Dkt. No. 1.) The UCPO Defendants filed the instant motion to dismiss on July 30, 2018. (Dkt. No. 13.) Plaintiff filed his timely opposition on September 5, 2018 and the UCPO Defendants filed their reply on September 25, 2018.[2] (Dkt. Nos. 16, 21.)

II. LEGAL STANDARD

An adequate complaint must be "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). This Rule "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level[.]" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted); *see also Phillips v. Cty. of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008) (stating that Rule 8 "requires a 'showing,' rather than a blanket assertion, of an entitlement to relief").

In considering a Motion to Dismiss under Rule 12(b)(6), the Court must "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips*, 515 F.3d at 231 (external citation omitted). However, "the tenet that a court must accept

[1] Plaintiff also named the Elizabeth Police Department ("EPD") and two of its officers, Alfonso Colon and James Szpond as defendants. (Dkt. No. 1.) As those defendants have not moved to dismiss the claims against them, this Opinion addresses only those claims brought against the UCPO Defendants, and makes no findings regarding the actions of the EPD or its officers.

[2] The UCPO Defendants' reply brief was filed late and was twenty-one pages long, in violation of Local Rules 7.1(d) and 7.2. Counsel is reminded that the local rules are not optional. Any future failure to conform filings to the rules without seeking permission from the Court will result in appropriate sanctions.

as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Determining whether the allegations in a complaint are "plausible" is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. If the "well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct," the complaint should be dismissed for failing to "show[] that the pleader is entitled to relief" as required by Rule 8(a)(2). *Id.*

III. DISCUSSION

The UCPO Defendants argue that dismissal is warranted because they are immune from suit pursuant to the protections of the Eleventh Amendment. The Eleventh Amendment states: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another state, or Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI. The United States Supreme Court has interpreted that language to extend to suits brought in federal court by a citizen against his/her own state, regardless of the relief sought. *See Hans v. Louisiana*, 134 U.S. 1, 13-14 (1890); *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974) (recognizing that "an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State"); *Thorpe v. New Jersey*, 246 Fed. Appx. 86, 87 (3d Cir. 2007); *Trapp v. New Jersey*, Civ. No. 17-10709, 2018 WL 4489680, at *3 (D.N.J. Sept. 19, 2018).

"Although the language of the Eleventh Amendment refers only to 'states,' arms of the state – including agencies, departments, and officials – are entitled to the protection of the Eleventh Amendment immunity from suit when the state is the real party in interest." *Trapp*, 2018 WL

4489680 at *3; *see also Bowers v. Nat'l Collegiate Athletic Ass'n*, 475 F.3d 524, 545 (3d Cir. 2007); *Pa. Fed'n of Sportsmen's Clubs, Inc. v. Hess*, 297 F.3d 310, 323 (3d Cir. 2002). In the Third Circuit, county prosecutor offices and their employees have consistently been afforded immunity from suit pursuant to the Eleventh Amendment when they are performing the "classic law enforcement and investigative functions for which they are chiefly responsible." *Beightler v. Office of Essex Cty. Prosecutor*, 342 Fed. App'x 829, 832-33 (3d Cir. 2009) (granting prosecutor's office immunity for its decision to charge plaintiff with unlawful possession of a firearm); *see also Woodyard v. County of Essex*, 514 Fed. App'x 177, 182 (3d Cir. 2013) (granting prosecutor's office immunity for prosecuting him on murder and weapons charges); *Hyatt v. County of Passaic*, 340 Fed. App'x 833, 837-38 (3d Cir. 2009) (recognizing that "[p]rosecutors have absolute immunity from suit under § 1983 when carrying out prosecutorial functions" and that "the decision to charge a suspect is one of the primary tasks of a prosecutor"); *Coleman v. Kaye*, 87 F.3d 1491, 1505 (3d Cir. 1996) (stating that "[w]hen county prosecutors engage in classic law enforcement and investigative functions, they act as officers of the State") (abrogated on other grounds); *In re Camden Police Cases*, Civ. No. 11-1315, 2011 WL 3651318, at *10 (D.N.J. Aug. 18, 2011) (concluding that the county prosecutor's office was "entitled to sovereign immunity under the Eleventh Amendment" for Section 1983 and state law tort claims). As the Third Circuit recently held, "acts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity." *Kennedy v. City of Philadelphia*, No. 18-1320, 2018 WL 4523611, at *2 (3d Cir. Sept. 21, 2018).

Plaintiff's claims against the UCPO Defendants are based on their decisions to charge, indict, and prosecute Plaintiff, and include civil rights violations pursuant to 42 U.S.C. §§ 1983,

1981, 1985, 1986 (Counts One – Five); New Jersey state civil rights violations pursuant to N.J.S.A. 10:6-1 *et seq.* ("NJCRA") (Count Six); and state law tort claims[3] (Counts Seven – Fourteen). Because the UCPO Defendants' alleged liability is rooted in their traditional prosecutorial and investigative functions, they are immune from suit under the Eleventh Amendment. *See e.g.*, *Lopez-Siguenza*, Civ. No. 13-2005, 2014 WL 1298300, at *5 (D.N.J. Mar. 31, 2014) (recognizing that "Eleventh Amendment sovereign immunity applies to claims under the NJCRA" and Section 1983); *Kulwicki v. Dawson*, 969 F.2d 1454, 1464 (3d Cir. 1992) (noting that a prosecutor "is absolutely immune" when making a decision to prosecute "even where he acts without a good faith belief that any wrongdoing has occurred"); *Davis v. Grusemeyer*, 996 F.2d 617, 629 (3d Cir. 1993) (recognizing that the decision to continue prosecution "is at the heart of the prosecutorial decision making process" and is protected by absolute immunity); *Burns v. Reed*, 500 U.S. 478, 490 (1992) (upholding absolute immunity for prosecutors even where prosecutor knowingly presented false testimony to the grand jury). Although Plaintiff suggests that the UCPO Defendants acted and conspired with others to deprive him of his constitutional, statutory, and common law rights by prosecuting him, "those conclusory allegations do not indicate that these defendants ever acted outside of their roles as advocates for the State" *Kennedy*, 2018 WL 4523611 at *2; *see also Kulwicki*, 969 F.3d at 1464 (noting that alleged "[h]arm to a falsely-charged defendant is remedied by safeguards built into the judicial system – probable cause hearings, dismissal of the charges – and into the state codes of professional responsibility"). Therefore, Plaintiff's claims against the UCPO Defendants must be dismissed.

[3] These include willful disregard, abuse of process, false arrest and imprisonment, malicious prosecution, negligence, intentional infliction of emotional distress, defamation (against UCPO and Spivey only), and vicarious liability (against UCPO only).

IV. CONCLUSION

For the reasons set forth above, the UCPO Defendants' Motion to Dismiss is **GRANTED**.

An appropriate order follows.

/s/ Susan D. Wigenton
SUSAN D. WIGENTON, U.S.D.J.

Orig: Clerk
cc: Cathy L. Waldor, U.S.M.J.
Parties